IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 754 of 2024 to 761 of 2024 and Cr.MP(M) Nos. 932 to 934 of 2024.

Reserved on: 13.06.2024

Date of Decision: 28.06.2024.

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1. Cr.MP(M) No. 754 of 2024

Ram Lal ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

2. Cr.MP(M) No. 755 of 2024

Umesh ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

3. Cr.MP(M) No. 756 of 2024

Susheel ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

4. Cr.MP(M) No. 757 of 2024

Om Prakash ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

5. Cr.MP(M) No. 758 of 2024

Harish ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

6. Cr.MP(M) No. 759 of 2024

Ram Chand ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

7. Cr.MP(M) No. 760 of 2024

Bhanu ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

8. Cr.MP(M) No. 761 of 2024

Rajesh ...Petitioner

Versus

State of Himachal Pradesh ...Respondent.

9. Cr.MP(M) No. 932 of 2024

Lakshay ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

10. Cr.MP(M) No. 933 of 2024

Nitin ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

11. Cr.MP(M) No. 934 of 2024

Nikhilesh ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr. Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1]

For the petitioners : Mr Ajay Kochhar, Senior Advocate, with M/s Varun Chauhan, Gaurav Kochhar and Bhairav Gupta, Advocates, in all the petitions.

For the Respondents : Mr. Lokender Kutlehria, Additional Advocate General, for respondent/ State, with Dy.SP Manvendra Thakur, DSP City, Shimla with ASI Suresh Kumar, IO, Police Station West Shimla, H.P.

Rakesh Kainthla, Judge

The informant made a complaint to the police on 1.4.2024 stating that her son Tikkam Chand alias Nittu (since deceased) was working as a labourer in the house of Sewa Nand in Village Khalyar. Prabha Devi, wife of Sewa Nand, called the informant on 22.3.2024 and said that Tikkam Chand had fallen. Sewa Nand also called her and told her that Tikkam Chand had died due to a fall. The informant was coming to her home on a bus. She told Sewa Nand that she would call him after getting off

[1] *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

the bus. However, she could not call him back, as she was unable to locate his mobile number. She told her other son Med Ram about the call. The police also called her and inquired whether she had authorized any person to burn the dead body to which she replied in negative. Med Ram along with his relations went to the village and found that the dead body was burnt by the villagers. His ash was handed over to him (Med Ram) with ₹5,000/-. The informant subsequently discovered that Tikkam Chand had committed a theft in a temple and the villagers had beaten him to death. The police registered the FIR. It was found that a call was received in Police Post Jutogh on 21.3.2024 that police should contact Rajiv Sharma. The police called Rajiv Sharma who said that one person had lit a fire near the temple. He was a thief and heavily intoxicated. He was being taken to the police post. The police waited for the person but nobody came to the police post. The police again contacted Rajiv Sharma in the morning and he said that the person was sent to his home after counselling him. Tikkam Chand was found dead at a distance of 60-70 mtrs. from the temple. His dead body was seen by Tara Chand. Tara Chand informed other villagers who were present near Sheetla Mata Temple about the death of Tikkam Chand. The

villagers gathered in the house of Jagdish Chand. He called Pradhan Ranjana Thakur, Up-Pradhan Rajinder Sharma and other members of the Panchayat. The villagers informed the Member of the Panchayat about the arson and theft committed by Tikkam Chand. They also told that Tikkam Chand was sent to his home. He was heavily intoxicated and he fell in a state of intoxication. Forensic experts inspected the spot and preserved the samples. The police went to the spot and seized the remains of the dead body. Rahul made a statement under Section 164 of Cr.P.C. that Umesh Kumar had dragged him (Rahul) out of his home and taken him to Sheetla Mata Temple. Umesh, Tara Chand and Rajiv Sharma gave beatings to Rahul and Tikkam Chand. The call details record were also checked and the persons were found in touch with each other during the night and in the morning. Rajiv Sharma, Vinay Sharma, Ashish and Hemant saw that Sheetla Mata Temple was put on fire on 21.3.2024 at 10.30 PM. They went to the temple and found Tikkam Chand putting the temple on fire. He also informed the police about this fact. Rajiv Sharma called Tara Chand, Geeta Ram, Shankar Lal, Ram Lal, Rajesh, Jagdish Harish etc. about the incident. They reached the temple and gave beatings to Tikkam Chand, who revealed

that Rahul was also involved in the theft. He was brought from his home by Ram Lal, Umesh, Bhanu, Nikhilesh, Nikhil, Nitin, Lakshay and Jagdish Chand. They gave beatings to Rahul. Rahul also saw Tikkam Chand lying on the floor. His head and face were bleeding. Rajiv, Hemant, Ashish, Vinay, Tara Chand, Geeta Ram, Shankar Lal, Harish and Sushil were present and gave beatings to Rahul and Tikkam Chand. The villagers also took their photographs and prepared the video. Subsequently, Tikkam Chand died and his dead body was burnt. The police arrested Vinay, Ashish, Shankar Lal, Geeta Ram, Rajiv Sharma, Tara Chand and Hemant. As per the opinion of the Medical Officer, Tikkam Chand could have died with a stick recovered by the police. The investigation was continuing. The mobile phones were sent to FSL and the result is awaited. It was further found that the deceased belonged to a Scheduled Caste; hence Section 3(2)(v) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, (in short 'the Act') was added.

2. The petitioners filed the present petitions seeking their pre-arrest bail. It is asserted that they are apprehending their arrest. No overt act has been attributed to them. False allegations were made by the police against the petitioners. The

petitioners were not involved in the commission of the offence. Petitioners would abide by all the terms and conditions, which the Court may impose. Hence, it was prayed that the present petitions be allowed and the petitioners be released on bail.

3. The police filed a status report asserting that as per the investigation conducted by the police, the involvement of Ram Lal, Umesh Kumar, Sushil Kumar, Harish Kumar, Bhanu, Rajesh Kumar, Nikhilesh, Nitin and Lakshay was found in the commission of the offence, however, Ram Chand and Om Prakash were not found involved in the commission of the offence.

4. I have heard Mr. Ajay Kochhar, learned Senior Counsel assisted by M/s Varun Chauhan, Gaurav Kochhar and Bhairav Gupta, learned Counsel for the petitioners and Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent-State.

5. Mr. Ajay Kochhar, learned Senior Counsel for the petitioners submitted that the petitioners were not involved in the commission of the offence and they were falsely implicated. Mere presence at the time of the cremation is not sufficient to

impute the common intention to the petitioners. Therefore, he prayed that the present petitions be allowed and the petitioners be released on bail. He relied upon the judgments of ***Hitesh Verma Vs. State of Uttrakhand and another, Cr. Appeal No. 707 of 2020, decided on 5.11.2020, Rameshwar Singh Vs. State of H.P., Cr.MP(M) No. 2360 of 2022, decided on 21.11.2022, Parul Thakur Vs. State of H.P., Cr.MP(M) No. 2419 of 2022, decided on 22.11.2022, Ashwani Kumar Vs. State of H.P., 2019 STPL 4437 HP*** and ***Khuman Singh Vs. State of H.P. Cr. Appeal No. 1283 of 2019, decided on 27.8.2019*** in support of his submission. He further submitted that the offence punishable under Section 3(2)(v) of the Act is not made out because the accused had not beaten the deceased because he belonged to the Scheduled Caste, in the absence of which of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act is not attracted.

6. Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent-State submitted that the petitioners were involved in the commission of a heinous offence. Their involvement is established by the statement of Rahul, the call details record and the statements of other witnesses. The investigation is continuing and custodial interrogation of the

petitioners is required. Therefore, he prayed that the present petitions be dismissed.

7. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

8. It was laid down by the Hon'ble Supreme Court in ***P. Chidambaram vs. Directorate of Enforcement 2019 (9) SCC 24*** that the power of pre-arrest bail is extraordinary and should be exercised sparingly. It was observed:

> "67. Ordinarily, arrest is a part of the procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; the possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for the grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

9. This position was reiterated in ***Srikant Upadhyay v. State of Bihar, 2024 SCC OnLine SC 282*** wherein it was held:

> **"25.** We have already held that the power to grant anticipatory bail is extraordinary. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of the imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion of the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to a miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases."

10. It was held in ***Pratibha Manchanda v. State of Haryana, (2023) 8 SCC 181: 2023 SCC OnLine SC 785*** that the Courts should balance individual rights, public interest and fair investigation while considering an application for pre-arrest bail. It was observed:

> **"21.** The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tightrope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the

> gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each case becomes crucial to ensure a just outcome."

11. In the present case, the police have specifically asserted that the involvement of the petitioners Ram Chand and Om Prakash was not found. Thus, they have no reasonable apprehension of their arrest and the petitions filed by them have become infructuous and are dismissed as infructuous.

12. The police have added Section 3(2)(v) of the Act. It was submitted that the said offence is not attracted since as per the case of the prosecution, the petitioner had not given beatings to the deceased because he was a member of Scheduled Caste. Reliance was also placed upon the judgments of the Hon'ble Supreme Court in ***Khuman Singh Vs. State of Madhya Pradesh, Cr. Appeal No. 1283 of 2019, decided on 27.8.2019*** and ***Hitesh Verma Vs. State of Uttrakhand and another, Cr. Appeal No. 707 of 2020, decided on 5.11.2020.*** This submission is not acceptable. Section 3(2)(v) of the Act provides that if any person commits an offence under the IPC punishable with imprisonment for a term of 10 years or more against a person knowing that such person is a member of the Scheduled Caste,

the person committing the offence shall be liable. Earlier the offence was required to be committed because of a person's caste but now after amendment, it is sufficient that the accused knew the victim's caste. Hence, the judgments cited will not assist the petitioners.

13. It was found out by the police that the victim resided in the village of the petitioners; therefore, the petitioners knew the deceased and as per Section 8 of the Act, the petitioners are presumed to know his caste. Hence, the essential requirement laid down under Section 3(2)(v) of the Act is fully satisfied. It was held by the Hon'ble Supreme Court in ***Patan Jamal Vali v. State of A.P., (2021) 16 SCC 225: 2021 SCC OnLine SC 343*** that after the amendment of the Act, it is not necessary that the offence should have been committed on the grounds of the caste of the victim, it is sufficient if the offence is committed with the knowledge of the victim's caste. It was observed:

> **"63.** It is pertinent to mention that Section 3(2)(*v*) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26-1-2016. The words "*on the ground of*" under Section 3(2)(*v*) have been substituted with "*knowing that such person is a member of a Scheduled Caste or Scheduled Tribe*". This has decreased the threshold of proving that a crime was committed on the

basis of caste identity to a threshold where mere knowledge is sufficient to sustain a conviction. Section 8 which deals with presumptions as to offences was also amended to include clause (*c*) to provide that if the accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise. The amended Section 8 reads as follows:

> "**8.** ***Presumption as to offences***.—In a prosecution for an offence under this Chapter, if it is proved that—
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> (*a*) the accused rendered any financial assistance in relation to the offences committed by a person accused of, or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume unless the contrary is proved, that such person had abetted the offence;
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> (*b*) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or prosecution of the common object.
>
> (*c*) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim unless the contrary is proved."

64. The Parliament Standing Committee Report on Atrocities Against Women and Children has observed that "high acquittal rate motivates and boosts the confidence of dominant and powerful communities for continued perpetration" and recommends inclusion of provisions of the SC & ST Act while registering cases of gendered violence against women from the SC & ST communities ["Parliament Standing Committee Report on Atrocities Against Women and Children", 15-3-2021, 107 available at<https://rajyasabha.nic.in/rsnew/Committee_site/Com

> mittee_File/ReportFile/15/143/230_2021_3_14.pdf>.]. However, as we have noted, one of the ways in which offences against SC & ST women fall through the cracks is due to the evidentiary burden that becomes almost impossible to meet in cases of intersectional oppression. This is especially the case when courts tend to read the requirement of "on the ground" under Section 3(2)(*v*) as "only on the ground of". The current regime under the SC & ST Act, post the amendment, has facilitated the conduct of an intersectional analysis under the Act by replacing the causation requirement under Section 3(2)(*v*) of the Act with a knowledge requirement making the regime sensitive to the kind of evidence that is likely to be generated in cases such as these."

14. This position was reiterated in ***Shashikant Sharma v. State of U.P., 2023 SCC OnLine SC 1599*** and it was held that the offence punishable under section 3(2) (v) of the Act is committed when the accused was aware of the caste of the victim. It was observed:

> **14.** From a bare perusal of the provision, it is crystal clear that for the above offence to be constituted, there must be an allegation that the accused not being a member of Scheduled Caste or Scheduled Tribe committed an offence under the IPC punishable for a term of 10 years or more against a member of the Scheduled Caste or Scheduled Tribe knowing that such person belongs to such 'community'.

15. The investigation has found that Rajiv, Tara Chand, Geeta Ram, Shankar Lal, Ram Lal, Rajesh, Jagdish, Harish, Ashish, Hemant and Vinay were present in the temple and they had given beatings to Tikkam Chand. Tikkam Chand died due to

the injuries sustained in a beating. Therefore, these persons are *prima facie* involved in the commission of an offence punishable under Section 302 of IPC. The police also found that Rajiv, Vinay, Ashish, Hemant, Rajesh, Harish, Lakshay, Ram Chand, Om Prakash, Jagdish etc. were present at the time of the cremation of the dead body, which shows their involvement in the commission of offence punishable under Section 201 of IPC.

16. The investigation is at an initial stage. The police specifically asserted that the petitioners are not disclosing anything and their custodial interrogation is required. Keeping in view the gravity of the offence and how a person was beaten to death, the plea of the police has to be accepted as correct. It was laid down by Hon'ble Supreme Court in ***State Versus Anil Sharma (1997) 7 SCC 187*** that where custodial interrogation is required, pre-arrest bail should not be granted. It was observed:-

> "6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-orientated than questioning a suspect who is well-ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such

> interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

17. A similar view was taken by the Delhi High Court in ***Mukesh Khurana v. State (NCT of Delhi), 2022 SCC OnLine Del 1032*** wherein it was observed:

> "**13.** One of the significant factors in determining this question would be the need for custodial interrogation. Without a doubt, custodial interrogation is more effective to question a suspect. The cocoon of protection, afforded by a bail order insulates the suspect and he could thwart interrogation reducing it to futile rituals. But, it must be also kept in mind, that while interrogation of a suspect is one of the basic and effective methods of crime solving, the liberty of an individual also needs to be balanced out."

18. Consequently, the petitioners cannot be released on pre-arrest bail. Hence, the present petitions fail and the same are dismissed.

19. The observations made hereinbefore shall remain confined to the disposal of the petitions and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

28th June, 2024
(Chander)